

**United States Department of Labor
Employees' Compensation Appeals Board**

M.E., Appellant)
and) Docket No. 10-1482
DEPARTMENT OF JUSTICE, FEDERAL) Issued: February 1, 2011
PRISON SYSTEMS, Beaumont, TX, Employer)

)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 3, 2010 appellant filed a timely appeal from the November 2, 2009 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The last merit decision was the Office's June 1, 2009 decision terminating appellant's medical and compensation benefits. The Board lacks jurisdiction to review the merits of this claim.¹

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹ An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008).

FACTUAL HISTORY

On August 4, 2003 appellant, a 36-year-old correctional officer, filed a claim alleging that she sustained traumatic injury to her neck while moving heavy equipment. The Office accepted her claim for cervicalgia and sprains of the neck, left shoulder and upper arm. Appellant was placed on the periodic rolls.

The Office found a conflict in medical opinion between appellant's treating physician, Dr. Ishan Shanti, and a second opinion physician, Dr. James Hood, a Board-certified orthopedic surgeon, as to whether she had residuals of her accepted conditions. Appellant was referred to Dr. Grant R. McKeever, a Board-certified orthopedic surgeon, for an impartial medical examination. In a March 28, 2008 report, Dr. McKeever found that appellant's work-related conditions had fully resolved.

On April 8, 2008 the Office issued a notice of proposed termination of appellant's medical and compensation benefits based upon Dr. McKeever's referee report. By decision dated June 1, 2009, it terminated her compensation benefits.

On June 23, 2009 appellant requested reconsideration. She contended that she was unable to perform her date-of-injury job, as evidenced by the fact that Dr. McKeever recommended work restrictions. Appellant noted that she was attending college in order to make a career change and asked that her benefits be continued until December 2009, when she planned to graduate. She submitted an April 23, 2009 letter from Lamar University reflecting that she would graduate in December 2009 if all requirements were met.

The record contains a May 16, 2009 statement from appellant. Appellant noted that she had just received the Office's April 8, 2009 proposed notice of termination.² She disagreed with the proposed action based on her inability to perform her date-of-injury job.

On October 2, 2009 appellant reiterated her appeal for continued benefits. She complained about her treatment by the Office and the physicians involved in her case, contending that her case worker did not want her to get well.

By decision dated November 2, 2009, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.³

LEGAL PRECEDENT

The Federal Employees' Compensation Act⁴ provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative)

² The record contains an envelope which contained the May 16, 2009 letter. The postmark on the envelope bears a July 9, 2009 date.

³ The Board notes that appellant requested an oral hearing on July 22, 2009. In a decision dated September 2, 2009, the Office denied her request as untimely.

⁴ 5 U.S.C. § 8101 *et seq.*

who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the “application for reconsideration.”⁵

The application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁶

A timely request for reconsideration may be granted if the Office determines that the reconsideration is granted, the case is reopened and the case is reviewed on its merits.⁷ Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁸

ANALYSIS

In a July 23, 2009 request for reconsideration, appellant contended that she was unable to perform her date-of-injury job, as evidenced by the fact that Dr. McKeever recommended work restrictions. She advised that she was attending college and asked that her benefits be continued until December 2009. Appellant did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law. She did not advance any relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to further review of the merits based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant did not submit any relevant or pertinent new evidence with her request.⁹ Therefore, appellant failed to satisfy the third requirement under section 10.606(b)(2).

On appeal, appellant contends that she remained unable to perform the duties of her date-of-injury position, as established by Dr. McKeever. She requests that she be allowed to retain her compensation benefits until she is able to begin a career that is within her restrictions. Appellant’s argument repeats her earlier assertions which are insufficient to warrant merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied her request for reconsideration.

⁵ 20 C.F.R. § 10.605.

⁶ *Id.* at § 10.606.

⁷ *Donna L. Shahin*, 55 ECAB 192 (2003).

⁸ 20 C.F.R. § 10.608.

⁹ *Id.* at § 10.606(b)(2).

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 2, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2011
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board